

REMARKS:

This Amendment is filed in response to the Office Action dated 15 December 2004, which provides for a response period ending 15 March 2005. A Request for Extension for Response Within the Second Month is submitted herewith, extending the reply period to 15 May 2005.

Claims 1-36 are hereby cancelled without prejudice. Accordingly, the rejections of claims 1-36 are considered moot. New claims 37-48 have been added.

The reminder in the Office Action regarding the proper content of the abstract of the disclosure is noted with appreciation. The abstract of the disclosure of the present application is considered to be in compliance with the guidelines noted in the Office Action.

The Office Action also includes a requirement for a new title. By this Amendment, the title has been amended as recommended in the Office Action. Reconsideration and withdrawal of the objection is therefore respectfully requested.

TELEPHONE INTERVIEW:

An Interview Summary, dated 28 February 2005, has been received for the present Application. The Interview Summary indicates that the substance of a telephonic interview conducted on 18 February 2005 must be included in the formal written reply to the last Office Action. The interview, however, was conducted with a practitioner that is no longer representing the Applicant. In addition, Applicant agrees with the substance of the interview, as provided by the Office on the Interview Summary. Accordingly, it is believed no further presentation by Applicant of the substance of the interview of 18 February 2005 is required.

NEW CLAIMS:

New claims 37-48 are considered to be patentably distinguishable over the prior art and in condition for allowance. New claims 37-48 include independent claims 37, 41, and 45. Independent claim 37, for example, is directed towards a system for manufacturing

planning. As noted in the specification, such a system allows for more efficient and profitable use of a manufacturing facility, as well as a source of information that can be used for marketing and contract negotiations. If demand is met for an end product, the manufacturing facility can be used to manufacture additional intermediate product and by-product that can be produced and sold. The disclosed system allows for forecasting of the quantities of end products, intermediate products, and by-products that can be produced. The system is claimed in claim 37 as follows:

A computer-implemented system for manufacturing forecasting, the system comprising one or more memory units and one or more processing units operable to:

store, in one or more of the memory units, end product demand information representative of a predicted future demand for an end product, and intermediate product information representative of a total amount of an intermediate product that can be produced;

determine, based on the end product demand information, a demand quantity of the end product that a manufacturer is to produce to satisfy the predicted future demand, wherein production of the demand quantity of the end product requires producing a first intermediate-product quantity of an intermediate product that is further processed to produce the demand quantity of the end product, and requires producing a first by-product quantity of a by-product;

determine, based on the intermediate product information and the demand quantity, a second intermediate-product quantity of the intermediate product that the manufacturer can produce in addition to the first intermediate-product quantity, wherein production of the second-intermediate-product quantity requires producing a second by-product quantity; and

determine, based on the demand quantity of the end product and the second intermediate-product quantity, a total by-product quantity of the by-product that the manufacturer can produce.

Claim 39, which recites a computer-implemented method of manufacturing forecasting, and claim 41, which recites a computer readable medium having encoded thereon software for manufacturing forecasting, recite similar limitations.

Claims 37, 39, and 41 and their dependent claims patentably distinguish over the teachings of portions of *Chase et al.*, Production and Operations Management:

Manufacturing and Services (1995) ("Chase").¹ For example, Chase is silent with respect to determining "a second intermediate-product quantity of the intermediate product that the manufacturer can produce in addition to the first intermediate-product quantity" and determining "based on the demand quantity of the end product and the second intermediate-product quantity, a total by-product quantity of the by-product that the manufacturer can produce." In fact, Chase teaches away from these limitations:

Section C of [Exhibit 19.6] shows that the outputs from X (a bottleneck) and Y (a nonbottleneck) are assembled into a product. As a nonbottleneck, Y has more capacity than X *so it can be used only 75 percent of the time*; otherwise spare parts accumulate.

(Chase, page number not visible, second paragraph below Exhibit 19.6, lines 1-3, emphasis added) The system claimed in claim 37 determines a quantity of intermediate product and by-product that can be manufactured once demand has been met for the end-product. This concept is clearly not disclosed or suggested by Chase, which instead teaches that Y, which produces a subassembly of a finished product, "can be used only 75 percent of the time" or else the part output from Y will accumulate. This statement clearly discourages production of at least intermediate products, and by-products as well, beyond that which is necessary for production of end products.

It is also noted that the Office Action indicates that Official Notice is taken on pages 16, 18, and 19. For example, on page 18 the Office Action states:

Official Notice is taken that it is old and very well known in the art that firms utilize enterprise management systems to manage intermediate products and by-products fro in doing so those firms:

- maximize profits and increase competitiveness by minimizing wastes and increasing the depth and breadth of products/services that can be produced and sold;
- meet government regulations by insuring the proper use and disposal of by-products and intermediate products;
- achieve social or environment goals/values of the firm.

¹ More specifically, the following portions of Chase, which were provided with the Office Action dated 15 December 2004: pages 297, 519, 588, 589, 600-605, 611, 612, 620, 621; and, on pages of which the page number cannot be seen in the copy provided, portions of sections 7.3, 13.1, 15.4, 15.5; two pages that include Exhibits 19.6 and 19.13, respectively; and a page that shows an Exhibit titled "V Plant".

(Office Action, page 18, lines 1-8) Applicant hereby traverses the Official Notice because the asserted facts are not supported by documentary evidence and appear to be based on opinions formulated using the present application as a template, which constitutes impermissible use of hindsight.

“Official Notice without documentary evidence to support an examiner’s conclusion is permissible only in some circumstances. While ‘official notice’ may be relied upon, these circumstances should be rare when an application is under final rejection or action under 37 C.F.R. 1.113. Official notice unsupported by documentary evidence should only be taken by the examiner where the facts asserted to be well-known, or to be common knowledge in the art are capable of instant and unquestionable demonstration as being well-known. As noted by the court in *In re Ahlert*, 424 F.2d 1088, 1091, 165 USPQ 418, 420 (CCPA 1970), the notice of facts beyond the record which may be taken by the examiner must be ‘capable of such instant and unquestionable demonstration as to defy the dispute’(citing *In re Knapp Monarch Co.*, 296 F.2d 230, 132 U.S.P.Q. 6 (C.C.P.A. 1961)).” MPEP § 2144.03(A) (emphasis in original).

“It would not be appropriate for the examiner to take official notice of facts without citing a prior art reference where facts asserted to be well known are not capable of instant and unquestionable demonstration as being well-known.” MPEP § 2144.03(A) (emphasis in original).

The Office Action provides no documentary evidence to support the Official Notice taken by the Examiner, yet the asserted facts are not capable of “instant and unquestionable” demonstration as being well-known. This is particularly true in view of the disclosure of Chase, which teaches away from various aspects of the present invention as discussed above in connection with claim 37. Thus, if the Examiner continues to maintain the rejection of the claims based on the Official Notice, the Applicant requests that the Examiner provide documentary evidence as stated in Section 2144.03 of the M.P.E.P. Further, if the Examiner is relying on personal knowledge to support the finding of what is known in the art, Applicant requests that the Examiner provide an affidavit or declaration

setting forth specific factual statements and explanation to support the finding. (See MPEP § 2144.03(C)).

Thus, for at least the reasons presented above, Chase cannot render obvious claim 37, or claims 38-40 which depend from claim 37.

Independent claims 41 and 45 recite limitations similar to those recited in claim 37. Thus, claims 41 and 45 and the claims depending from claims 41 and 45 are considered patentably distinguishable over Chase for at least the reasons discussed above in connection with claim 37.

It is noted that the Office Action, at certain places, refers to portions of Chase that are neither cited on the Notice of References Cited (PTO-892) nor provided with the Office Action. For example, page 9 of the Office Action cites chapter 1, pages 5 and 17; page 10 of the Office Action cites chapter 7, sections 7.1, 7.2, pages 262-296; page 11 cites the entirety of chapters 7 and 13-16, Exhibit 13.5, pages 524-525, 546, 590-599; page 12 cites pages 242-243, the entirety of chapters 5, 6, and 15, Exhibit 17.3; page 14 cites the entirety of chapters 7, and 14-17; page 15 cites the entirety of chapters 1, 2, 7, 8, 10, and 19, and pages 606, 650, 652, and 761; page 19 cites the entirety of chapters 2, 4, 7, 8, 13-15 and Exhibit 19.3 on page 772. None of these portions of Chase have been properly cited and provided to the Applicant for review as required by MPEP 707.09(a). If these portions of Chase are continued to be used as a basis for rejecting claims of the present Application, it is respectfully requested that these portions of Chase be properly cited and provided to the Applicant for review.

For the reasons set forth herein, the Applicant submits that claims 37-48 are not rendered obvious by Chase. The Applicant further submits that claims 37-48 are in condition for allowance. Therefore, the Applicant respectfully requests claims 37-48 be allowed.

CONCLUSION:


In view of the foregoing amendments and remarks, this application is considered to be in condition for allowance, and early reconsideration and a Notice of Allowance are earnestly solicited.

A Request for Extension for Response Within the Second Month is being filed concurrently herewith along with a Transmittal letter that includes an authorization to charge the Extension of Time fee of \$450.00 to Deposit Account No. **500777**. If there is no separate Petition for Extension of Time filed herewith, this document is to be construed as also constituting a Petition for Extension of Time Under 37 C.F.R. § 1.136(a) for a period of time sufficient to enable this document to be timely filed. Any fee required for such Petition for Extension of Time should be charged to Deposit Account No. **500777**.

Please link this application to Customer No. 38441 so that its status may be checked via the PAIR System.

Respectfully submitted,

6 MAY 2005
Date


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